

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

NO. 76-296

BILLY JOE ADCOX

Petitioner

VERSUS

CADDO PARISH SCHOOL BOARD

Respondent

**RESPONSE OF CADDO PARISH SCHOOL BOARD TO
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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October 29, 1976

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STATEMENT OF THE CASE

The statement of the case as outlined in the petitioner's brief beginning on page 4 is correct to the extent stated, but it omits many undisputed facts which need to be considered for an understanding and a correct resolution of the issues presented in this petition.

After years of litigation in *Jones, et al vs. Caddo Parish School Board, et al*, United States District Judge Nauman S. Scott appointed a Citizens Committee in early 1973 to present a plan for the desegregation of the Caddo Parish school system. This committee was composed of five white and five black members, all outstanding business and professional men and women. After many public and private meetings, a plan was unanimously adopted and presented to the Court on June 1, 1973. This plan was accepted by all parties to the litigation, including the United States, who was an intervenor. The plan was adopted and made the judgment of the court. [See Appendix A (excerpts from plan approved by the Court).]

The Caddo Parish School Board has followed the plan and now contends that a unitary school system has been established in Caddo Parish.

The Caddo Parish School Board has never adopted a promotion plan based on seniority or other qualification for the assignment of teachers to additional duties involving coaching positions either as an assistant or head coach. On August 9, 1967, it did adopt a policy, which is still in effect, for the superintendent to recommend such assignments and for approval by the board. [Appendix B (Affidavit of Superintendent filed in District Court and made a part of the Appendix in the Court of Appeals).] The Superintendent did not recommend the assignment of Mr. Adcox to be a head coach. [Appendix B, page 18.]

The plan to desegregate the Caddo Parish school system submitted to the Court, accepted by all parties to the pending litigation and made the judgment of the Court provides for

a general goal of a 50-50 ratio of black-to-white administrators, staff and teachers within three years.

When the Board, without the recommendation of the Superintendent, appointed petitioner and one other white to head coaching positions on March 20, 1974, there were five head coaches who were white and three who were black. With these two assignments, the ratio moved to seven white and three black. This result was contrary to the letter and intent of the Court Order and was by a very divided Board.

The Board recognized its error and just a few days later rescinded the two appointments. It then followed the procedures which it had adopted in 1967 and also in compliance with the Court Order it assigned two black teachers to these positions. With this action the provisions of the Court Order were fully complied with and the ratio in this category became 50-50 for the senior high schools in Caddo Parish. [Appendix B.]

ARGUMENT

The major thrust of petitioner's argument relates to the claim that the right of the petitioner to promotion has been denied. Several citations are contained in the brief in support of this position. The petitioner's error is obvious. There is no evidence whatever in the record to indicate that the Caddo Parish school system had any system of promotions based on seniority as an assistant or on any other classification so as to entitle any particular teacher, black or white, to be appointed as head coach. As a matter of fact, there was nothing to have prevented the Caddo Parish School Board from going

outside the system to employ a teacher and head football coach to fill the vacant position.

It is conceded that Mr. Adcox has been with the Caddo Parish school system for the necessary period to acquire tenure as a teacher. He continues to be employed as a teacher with the additional assignment as an assistant coach, and no proceedings have been instituted nor are any contemplated which would attempt to remove him as a tenured teacher.

Mr. Adcox was illegally assigned duties as a head coach. The assignment was contrary to the order of the United States District Court and the policies of the Caddo Parish School Board in that he was not recommended to the Board by its superintendent.

The Louisiana law provides for the assignment of teachers to additional duties with additional salaries. LSA-R.S. 17:422 provides in part:

"Nothing contained in R.S. 17:421 shall prevent parish or city school boards from providing additional compensation or increased increments for special teachers, such as principals, . . . coaches, . . . music teachers, or any other teachers . . ."

R.S. 17:421 is the statute fixing the minimum salary schedule for teachers in the Louisiana public schools.

Thus if Mr. Adcox had been properly and legally assigned duties as a head coach, and had been relieved of those duties, he would not have lost tenure as a teacher. He would merely have been relieved of some duties and the extra compensation that would have been paid. However, he will continue as a teacher in the Caddo Parish Schools.

1. THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT ON THE ISSUES INVOLVED.

This Court has long recognized that faculty and staff desegregation is a goal to be achieved in the establishment of a unitary school system.

In *U. S. vs. Montgomery County Board of Education*, 395 U. S. 225, 23 L. Ed. 2d 263, at page 270, this Court said:

"The dispute in this action centers only on that part of the 1968 order which deals with faculty and staff desegregation, a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination."

The Court reaffirmed the *Montgomery* decision in *Swann vs. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 28 L. Ed. 2d 554, at page 568, when it said:

"In the companion Davis case, the Mobile school board has argued that the Constitution requires that teachers be assigned on a 'color blind' basis. It also argues that the Constitution prohibits district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation. **WE REJECT THAT CONTENTION.**" (Emphasis ours)

In *Bradley vs. School Board, City of Richmond*, 382 U. S. 103, 86 S. Ct. 224, 15 L. Ed. 2d 187, the Court ruled that the Fourth Circuit Court of Appeals should have remanded the case for hearings regarding the contention that racial assignments of staff affected the rights of pupils.

In *Swann, supra*, this Court expressly rejected the contention that the Civil Rights Act of 1964 limited the powers of federal district courts. The Court said:

"In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system."

* * * * *

"... nothing in the Act which provides us material assistance in answering the question of remedy for state-imposed segregation." p. 567

Petitioner cites *McDonald, et al vs. Santa Fe Trail Transportation Company, et al*, 44 LW 5067 (1976), in support of the contention that the decision of the Court below conflicts with the decisions of this Court. The cited case is certainly not applicable to the present issue. The Court held in *McDonald* that Title VII of the Civil Rights Act of 1964 prohibits the discharge of an employee because of the employee's race and also that racial discrimination in private employment is prohibited against white persons as well as non-whites.

The respondent has not discriminated against petitioner. His assignment was not rescinded because of race. It was because the Board had erred and its action required a rescission. He simply could not be legally assigned to the duties of head coach in defiance of the Court Order for the desegregation of the Caddo Parish school system. His assignment as head coach was made in error by the Board. It was not only contrary to its own policy but contrary to a Court Order binding it to desegregate its faculties. The rescission of this action by the Board was required.

If petitioner's petition is correct, a recalcitrant school board could simply evade a desegregation court order like that in the present case by appointing all whites to positions and then tell the Court that it could not change their assignment under Title VII of the Civil Rights Act. This position would simply be untenable.

It is therefore submitted that the cases cited by petitioner in support of his contention that the decision of the Court of Appeals, Fifth Circuit, in this case is in conflict with the decisions of this Court do not support that position. The quotes from the dissenting opinion of Justice Douglas in *DeFunis, et al vs. Odegaard*, 416 U. S. 312 (1974), are also inapplicable to the issues presented in this case.

1. THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS IN THIS CASE IS NOT IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

Respondent submits that the citations contained in petitioner's brief do not support the claim that the decision of the Fifth Circuit conflicts with decisions in two other circuits.

In the case of *Porcelli vs. Titus*, 431 F. 2d 1254 (3rd Circ. 1970), the school board by resolution abolished a former list for appointment of principals and vice-principals and adopted a recommendation by the superintendent providing a list of 35 white and 20 Negro appointments. The former list had only one Negro for each. The system had 72 principals, none of whom were black. There were 67 vice-principals and

four were black. The District Court dismissed the suit of the white principals. The Circuit Court affirmed and in part said:

"With this contention we do not agree. State action based partly on considerations of color, when color is not used per se, and in furtherance of a proper governmental objective, is not necessarily a violation of the Fourteenth Amendment. Proper integration of faculties is as important as proper integration of schools themselves, as set forth in *Brown v. Board of Education*, 349 U. S. 294, 295, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), the thrust of which extends to the selection of faculties. . . . Every predominantly Negro school should have, wherever possible, substantially as integrated a faculty as the predominantly white school."

* * * * *

" Further, in *United States v. Jefferson County Board of Education*, 372 F. 2d 836, 895 (5 Cir. 1966), it was stated, 'As to faculty, we have found that school authorities have an affirmative duty to break up the historical pattern of segregated faculties, the hall-mark of the dual system.' " p. 1257

Petitioner cites two cases from the Second Circuit Court of Appeals, viz: *Kirkland vs. New York State Department of Correctional Services*, 520 F. 2d 420; and *Chance vs. Board of Examiners and Board of Education of the City of New York*, 534 F. 2d 993 (1976). Both of these decisions were rendered by Circuit Judge Van Graafeiland. These cases deal with the validity of an "excessing process" for supervisory personnel in *Chance* and a "bumping" effect with quota systems in *Kirkland*. The Courts recognized that the Civil Rights Act and Title VII was not intended to invalidate bona

fide seniority systems. The Court in *Chance* recognized that a senior white member of a group of education employees could not be required to step aside and forego benefits guaranteed by state law and union contract simply because a younger or less experienced member was black or Puerto Rican.

The Court in *Chance* cited *Watkins vs. Steel Workers Local No. 2369*, 516 F. 2d 41 (5th Cir. 1975); and *Local 189, United Papermakers vs. United States*, 416 F. 2d 980, 994 (5th Cir.), cert. denied 397 U. S. 919, 90 S. Ct. 926, 25 L. Ed. 2d 100 (1970), in support of its decision.

Thus, it would appear obvious that the issue in the case now before the Court is not related to the decisions in the cited cases. The Fifth Circuit is not in conflict with those two decisions and certainly not in conflict with the decision in the present case. In *Chance*, the Court quoted from the Fifth Circuit in *Watkins, supra*, as follows:

" Our brothers in the Fifth Circuit say that 'regardless of what that history may show as to Congressional intent concerning the validity of seniority systems as applied to persons who have themselves suffered from discrimination, there was an express intent to preserve contractual rights of seniority as between whites and persons who had not suffered any effects of discrimination.' *Watkins, supra*, 516 F. 2d at 48."

* * * * *

" we agree with the court in *Waters* that 'having passed scrutiny under the substantive requirements of Title VII, the employment seniority system . . . is not violative of 42 U.S.C. § 1981.' *Waters, supra*, 502 F. 2d at 1320, n. 4." p. 998

In the case now before the Court Mr. Adcox had no seniority position at the time of the Court Order. He was fully protected in the position he occupied at the time by the Order of the District Court and also by the tenure laws of the State of Louisiana.

Petitioner also cites *Bridgeport Guardians, Inc. vs. Members of Bridgeport Civil Service Com.*, 482 F. 2d 1333 (CA 2, 1973). The Court in the cited case recognized that a district court has wide discretionary powers to prohibit discrimination and to eradicate the effects of past discrimination.

This is what has been done by the Court in this case by the order of July 20, 1973, with the consent of all parties involved in the litigation. If this relief is accomplished by that Order, it follows that the respondent, Caddo Parish School Board, could not disregard the plan to eradicate past discrimination by assigning petitioner to a position in contravention of the Order. The Board's action in assigning Mr. Adcox had to be set aside either voluntarily or by action of the Court. In this case the respondent has voluntarily corrected its error, by rescinding its assignment of Mr. Adcox.

The petitioner also cites *Patterson vs. American Tobacco Co.*, 535 F. 2d 257 (1976), 4 CA, in support of his application. This case also points out the error in the position taken by petitioner. If Mr. Adcox had been occupying the position of teacher and head coach at the time of the Court Order and the Board had removed him in order to achieve a 50-50 ratio, the citation of *Patterson* and the other cases would have been appropriate. In *Patterson* the Court recognized the correctness of imposing quotas to remedy past dis-

crimination in the matter of employment under Title VII of the Civil Rights Act. The Court said.:

"Finally, the district court ordered that vacancies in the assistant foreman, foreman, and office supervisory positions must be filled with qualified blacks and women, except when none can be found, until the percentage of these classes of workers in the Richmond Standard Metropolitan Statistical Area (SMSA) . . ."

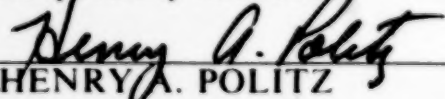
* * * * *

"Uniformly, however, Title VII has been construed to authorize district courts to grant preferential relief as a remedy for unlawful discrimination. . . ." p. 273

We again say that a disregard of the Court's Order in such a case could be set aside by the Court or it could be done voluntarily. The Caddo Parish School Board did the latter.

The application for a writ of certiorari should be denied.

Respectfully submitted,


HENRY A. POLITZ

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Shreveport, Louisiana 71163

Counsel for Respondent

October 29, 1976

CERTIFICATE OF SERVICE

I hereby certify that three copies of the brief submitted by respondent have been served on counsel of record for petitioner, Mr. Robert G. Pugh, 555 Commercial National Bank Building, Shreveport, Louisiana 71101, by depositing the same in a United States mail box, with first class postage prepaid.


 HENRY A. POLITZ
 Attorney for Respondent

October 29, 1976

APPENDIX A

**Desegregation Plan Submitted by
 Court-Appointed Committee**

I. INTRODUCTION

The Committee herewith submits to the Court its plan for further desegregation of the schools in the Caddo Parish School District. This plan contemplates full resolution of the Plaintiffs' claims in their petitions of February 25, 1972 and March 6, 1972 and upon approval by the Court will bring about the conversion of the school district to a unitary school system.

* * * * *

II. GENERAL PROVISIONS

1. The following proposals, in toto, constitute the committee's plan for desegregation of the Caddo Parish School District. As a resolution of the problem facing this community, the plan has been formulated by taking into consideration the rights, needs and desires of all segments of the community and would not be suitable for adoption in part.

2. As a general goal, it is stipulated that a 50-50 ratio of black to white administrators, staff, and teachers shall be attained within three years. This ratio reflects the current ratio of black to white pupils in the system. This transition shall be carried out by utilizing the opportunities which occur as a result of normal attrition, and no personnel shall be discharged or transferred by reason of this provision.

3. A Citizens Advisory Committee shall be established to assist in the implementation of the plan. This commit-

tee shall consist of twelve members to be appointed by the Court. The membership shall be divided equally between blacks and whites and its chairman shall be elected by its members. The committee should meet at least once each month to hear suggestions and complaints about the implementation of this plan and shall advise the School Board of any matters which it feels should be brought to its attention.

* * * * *

IV. PLAN FOR DESEGREGATION OF STAFF

"Staff" shall be defined to be all principals, assistant principals, teachers, teacher-aides and other staff working directly with children at any school, whether regular or special part-time. In carrying out the general provision regarding a 50-50 black to white ratio, each category of staff such as "Principals", "Assistant Principals", "Head Coaches", "Assistant Coaches", "Teachers", "Counselors", "Band Directors", "Choir Directors", "Teacher-Aides", etc., shall be considered as subject to the provision. Additionally, the black to white ratio of the total of staff personnel at each school shall reflect a 50-50 black to white ratio. While it may be impracticable or even impossible to attain an exact 50-50 ratio in each of these categories at a particular school, in no case shall a racial percentage of total staff or of teachers at any school be greater than sixty per cent (60%) nor less than forty per cent (40%).

It is anticipated that the general goal prescribed will be more difficult to reach in those staff categories with fewer members and, for this reason, special care should be taken

that vacancies occurring in these categories be used to bring about a strongly positive progression toward the goal. In the case of the largest group, the teachers, it is recognized that while continual progress must be shown, this group may require the longest time for attainment of the goal within the specified three year period.

* * * * *

APPENDIX B

Affidavits of Dr. Earl A. McKenzie,
Superintendent, Caddo Parish Schools

STATE OF LOUISIANA PARISH OF CADDO

BEFORE ME, the undersigned authority, personally came and appeared DR. EARL A. McKENZIE, who, after being first duly sworn, did depose and say:

That he is duly qualified and acting Superintendent of the Caddo Parish Schools and Secretary of the Caddo Parish School Board.

There are ten high schools in Caddo Parish. A "head coach" is assigned to each high school. As of March 20, 1974, there were five head coaches who were white and three who were black. After the appointments made by the Board on March 20, 1974, there were seven white head coaches and three black head coaches. After the rescinding of the appointments made on March 20, 1974, and the appointments

made by the Board on May 24, 1974, the ratio of black-to-white head coaches became 50-50.

Affiant attaches to this affidavit the minutes of the Caddo Parish School Board covering the regular meeting of March 20, 1974, a special meeting of March 29, 1974, a regular meeting of April 3, 1974, and a special meeting of May 24, 1974.

The minutes attached to this affidavit reflect that the Caddo Parish School Board did on March 20, 1974, appoint Mr. Billy Joe Adcox head coach of Southwood High School. The minutes further reflect that at a special meeting on March 29, 1974, this appointment was rescinded by the Board.

The minutes of April 3, 1974, reflect that there were discussions and motions made by members of the Board relative to the vacancy in this position, but no official action was taken by the Caddo Parish School Board.

On May 24, 1974, the Caddo Parish School Board appointed Robert L. Burton, a black, as head coach of Southwood High School. With this appointment and one other made on the same date, the white-to-black ratio in the position of head coaches became 50-50.

Affiant further declares that the minutes attached to this affidavit are true and correct minutes and reflect the actions of the Caddo Parish School Board at the meetings referred to therein.

/s/Earl A. McKenzie

SWORN TO AND SUBSCRIBED before me, Notary, on this 30 day of May, 1974.

/s/John R. Pleasant

Notary Public

STATE OF LOUISIANA
PARISH OF CADDO

BEFORE ME, The undersigned authority, personally came and appeared DR. EARL A. McKENZIE, who, after being first duly sworn, did depose and say:

That he is duly qualified and acting Superintendent of the Caddo Parish Schools and Secretary of the Caddo Parish School Board.

Affiant supplements the affidavit executed on May 30, 1974, designated as Exhibit "B" and attached to a motion for summary judgment filed by the Caddo Parish School Board.

The plaintiff, Billy Joe Adcox, began teaching in Caddo Parish in 1960 at Woodlawn High School with the additional duties of an assistant coach.

He was later transferred to Fair Park High School and in February, 1969, was appointed as Head Coach. On August 15, 1973, he resigned his position as Head Coach and was then assigned as an Assistant Coach.

On March 20, 1974, the Caddo Parish School Board appointed Mr. Adcox as Head Coach at Southwood High

School. The effective date of this appointment was March 25, 1974.

On March 29, 1974, or four days later, the Caddo Parish School Board rescinded this appointment and he was reassigned as a teacher and Assistant Coach at Fair Park High School.

Affiant did not recommend to the Caddo Parish School Board that Mr. Adcox be appointed as Head Coach at Southwood High School. The minutes of the meeting recite that:

"The Superintendent stated that he had two coaching vacancies and at this time he had no recommendations...."

The minutes further show that the appointment was made on Motion of a Board member and approved by vote of the Board.

The following policy was adopted by the Caddo Parish School Board on the 9th day of August, 1967:

".... The Superintendent in the future be required to submit recommendations for approval by the Board of assistant principals, principals, head coaches, supervisors, directors, and assistant superintendents and that the names of the candidates for these positions, as vacancies occur, be submitted to Board members at least one week in advance of the board meeting."

This policy has not been rescinded.

Affiant submits the following statistics relating to the white-black ratio of staff, coaches, teachers and students for the school years 1972-73 and 1973-74.

	1972-73		1973-74	
	White	Black	White	Black
Senior High Principals	7	3	6	4
Senior High Assistant Principals	9	8	10	10
Junior High Principals	9	3	7	5
Junior High Assistant Principals	8	3	6	5
Elementary Principals	36	17	28	19
Senior High Head Coaches	6	4	5	5
Classroom Teachers K-12	1,523	1,024	1,268	936
Students K-12	25,591	25,682	24,117	25,377

Affiant further shows that following the Court Order of July 20, 1973, to date, the total appointments of staff, principals, coaches and teachers are as follows:

	Total	Black	White
One Year appointments	4	2	2
New Appointees beginning August 1, 1973	36	27	9

/s/Earl A. McKenzie

Superintendent, Caddo Parish
Schools, and Secretary,
Caddo Parish School Board

SWORN TO AND SUBSCRIBED before me, Notary, on this 25th day of June, 1974.

/S/Mary G. Kellogg

Notary Public